THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

Writ Petition No.21430 of 1997

Date: 9th February, 2007

Between:

E.Rama Rao S/o.Basviah, aged about 40 years,
Technical Assistant, A.P. Warehousing Corporation,
Karimnagar, Karimnagar District.

..... Petitioner

AND

1.A.P.State Warehousing Corporation, Hyderabad,
rep. by its Managing Director and another.

.....Respondents

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

Writ Petition No.21430 of 1997

ORDER:

The short question which arises for consideration in this writ petition is whether the order of the second respondent dated 28.05.1994, whereby punishment of withholding of two increments with cumulative effect and recovery of Rs.18,922/- was ordered against the petitioner, could have been passed without conducting an enquiry

2. Facts are not in dispute. The petitioner was issued a charge memo, dated 02.11.1989. He submitted his explanation thereto on 15.11.1989. On 11.11.1991 the respondents issued a show-cause

notice, proposing the punishment of withholding of two increments with cumulative effect. The petitioner submitted his reply thereto. On 16.04.1993, the disciplinary authority passed the impugned order imposing punishment of withholding of two increments with cumulative effect. The appeal, preferred by the petitioner on 30.05.1993, was dismissed by the Chairman of the respondent-Corporation on 28.05.1994 and the said order was received by the petitioner on 01.06.1994.

3. *Sri P.Kishore Rao,* learned counsel for the petitioner, placing reliance on the judgment of the Supreme Court in ***Kulwant Singh Gill v. State of Punjab***[1]***,*** would contend that the punishment of withholding of two increments with cumulative effect is a major punishment necessitating departmental enquiry being held before it was passed and since, admittedly, no departmental enquiry was held against the petitioner, the said punishment could not have been imposed and, as such, both the order of the disciplinary authority dated 16.04.1993 and the order of the appellate authority dated 28.05.1994 are liable to be quashed.

4. *Smt.R.Kameswari*, learned Standing Counsel for the respondent-Corporation, on the other hand, would submit that the Andhra Pradesh State Warehousing Corporation Employees Regulations, 1965 (for short, 'the Regulations') does not classify penalties as minor or major. Learned Standing Counsel would submit that the punishment, imposed on the petitioner, of withholding of two increments with cumulative effect and recovery from pay of the whole or part of the pecuniary loss caused to the Corporation, is under items (b) and (d) of Regulation 35 of the Regulations. Learned

Standing Counsel would submit that for punishments specified in items (a), (b) and (d) of Regulation 35, the Regulations require an opportunity to be given to the employee to submit his representation and it is only in cases where any of the penalties specified in items (c), (e), (f) and (g) of Regulation 35 are imposed, is a departmental enquiry required to be held, that too, when the employee requests that an enquiry be held in this regard.

5. Regulations 35 and 36 of the Regulations read as follows:

35. Disciplinary Action: An employee who commits a breach of the regulations of the Corporation or who displays negligence, inefficiency or indolence or who knowingly does any thing detrimental to the interests of the Corporation or in conflict with its instructions or who commits a breach of discipline or is guilty of any other act of misconduct or who is convicted of a criminal offence, shall be liable to the following penalties namely:

a) Censure.
b) Withholding of increments or promotion.
c) Reduction to a lower post in his permanent class or to a lower stage in his incremental stage.
d) Recovery from pay of the whole or part of the pecuniary loss caused to the Corporation by the employee by negligence or breach of orders.
e) Compulsory retirement.
f) Removal from the service of the Corporation and
g) Dismissal.

36. **Authorities competent to impose penalty**:

An employee of the Corporation may for good and sufficient cause be punished in one or the other of the above ways at the discretion of the Managing Director who shall be the authority competent to impose such punishment.

1) The authority imposing any penalty under these regulations shall maintain a record showing:-

i) The allegations upon which action was taken against the person punished.
ii) The charges framed.
iii) The person's representation, if any, and the evidence taken, if any, and
iv) the finding and the grounds thereof.

2) All orders of punishment shall also state the grounds on which they are based and shall be communicated in writing to the person against whom they

are passed.

i) In every case where it is proposed to impose on an employee any of the penalties specified in item, (a), (b) and (d) of Regulation 35, he should be given an opportunity of making any representation that he may desire to make and such representation if any, shall be taken into consideration before the order imposing the penalty is passed.

ii) In every case where it is proposed to impose on an employee any of the penalties specified in the items [c], (e), (f) and (g) of Regulation 35 the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged together with a Statement of allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing order on the case. He shall be required within a reasonable time to put in a written statement of his defence and to state whether he desires an oral enquiry or only to be heard in person. An oral enquiry shall be held if such an enquiry is desired by the person charged or is directed by the authority concerned. At that enquiry, oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross examine the witnesses to give evidence in person and to have such witness called as he may wish, provided that the officer conducting the enquiry may for special and sufficient reasons to be recorded in writing, refuse to call a witness. After the enquiry has been completed, the person charged shall be entitled to put in if he so desires any further written statement of his defence. If no oral enquiry is held and if he had desired to be heard in person, a personal hearing shall be given to him. The proceedings shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof.

iii) After an enquiry under clause (ii) where it is proposed to impose on the person charged any penalty of reduction to lower rank in the seniority list of a [c] lower post of lower stage in a time scale (e) compulsory retirement (g) removal from service (h) dismissal from service, such penalty may be imposed on the basis of the evidence reduced during the enquiry and it shall not be necessary to give to the person charged any opportunity of making representation on the penalty proposed to be imposed.

iv) ……

v) …….

vi) ……..

vii) ……..

viii) ……..”

6. In ***Kulwant Singh Gill***[1], the Supreme Court, while considering the Punjab Civil Services (Punishment and Appeal) Rules, 1970, observed as follows:

“….The further contention of Shri Nayar that the procedure under Rule 8 was followed by issuance of the show cause notice and consideration of the explanation given by the appellant would meet the test of Rules 8 and 9 of the

Rules is devoid of any substance. Conducting an enquiry, dehorse the rules is no enquiry in the eye of law. It cannot be countenanced that the pretence of an enquiry without reasonable opportunity of adducing evidence both by the Dept. as well as by the appellant in rebuttal, examination and cross-examination of the witnesses, if examined, to be an enquiry within the meaning of Rules 8 and 9 of the Rules. Those rules admittedly envisage, on denial of the charge by the delinquent officer, to conduct an enquiry giving reasonable opportunity to the presenting officer as well as the delinquent officer to lead evidence in support of the charge and in rebuttal thereof, giving adequate opportunity to the delinquent officer to cross-examine the witnesses produced by the Dept. and to examine witnesses if intended on his behalf and to place his version; consideration thereof by the enquiry officer, if the disciplinary authority himself is not the enquiry officer. A report of the enquiry in that behalf to be placed before the disciplinary authority who then to consider it in the manner prescribed and to pass an appropriate order as for the procedure in vogue under the Rules. The gamut of this procedure was not gone through. Therefore, the issuance of the notice and consideration of the explanation is not a procedure in accordance with Rules 8 and 9. Obviously, the disciplinary authority felt that the enquiry into minor penalty is not necessary and adhering to the principles of natural justice issued the show cause notice and on receipt of the reply from the delinquent officer passed the impugned order imposing penalty thinking it to be a minor penalty. If it is considered, as stated earlier, that it would be only a minor penalty, the procedure followed certainly meets the test of the principles of natural justice and it would be a sufficient compliance with the procedure. In view of the finding that the impugned order is a major penalty certainly then a regular enquiry has got to be conducted and so the impugned order is clearly illegal. The Trial Court rightly granted the decree. The judgment and decree of the High Court is vitiated by manifest illegality. At this distance of time, it is not expedient to direct an enquiry under rules 8 and 9 of the Rules. The appeal is accordingly allowed and the judgment and decree of the High Court is set aside and that of the trial court is restored but in the circumstances without costs."

As held in ***Kulwant Singh Gill***[1], when a penalty of withholding of two increments with cumulative effect is imposed it would, in effect, result in the two increments earned by the employee being cut off as a measure of penalty forever in his upward march of earnings in the higher scale of pay and would result in the clock being put back. The employee, in effect, is reduced to a lower stage in the time-scale of pay by two places. Even under the Regulations of the respondents-Corporation, reduction to a lower stage in the incremental stage, of

an employee, falls under item [c] of Regulation 35 and, under Regulation 36(2)(ii), in every case where it is proposed to impose on an employee any of the penalties specified in items [c], (e), (f) and (g) of Regulation 35, a formal charge is required to be drawn and, if requested by the employee concerned, an oral enquiry is required to be held. Admittedly, in the present case, no oral enquiry was held and merely on the basis of a charge memo being issued and the petitioner's explanation called thereto and on a show-cause notice proposing penalty to which the petitioner submitted his reply, the impugned order of punishment came to be passed.

7. Since the impugned orders of the disciplinary authority, dated 16.04.1993 and that of the appellate authority dated 28.05.1994 are contrary to the statutory regulations of the respondent-Corporation, both the orders are quashed. It is made clear that the order passed by this Court would not preclude the respondents from imposing any of the penalties under items (a), (b) and (d) of Regulation 35 of the Regulations or to follow the procedure prescribed in Regulation 36(2) of the Regulations, if it intends to impose any of the penalties specified in item [c], (e), (f) and (g) of Regulation 35.

8. This writ petition is, accordingly, allowed. However, in the circumstances, without costs.

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RAMESH RANGANATHAN, J.

Date:09th February, 2007.

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[1] 1990 (6) SLR 73